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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,385	12/02/2003	Vernon Russ Husk	P314620	5599
22931	7590	09/14/2004	EXAMINER	
HUGHES LAW FIRM, PLLC PACIFIC MERIDIAN PLAZA, SUITE 302 4164 MERIDIAN STREET BELLINGHAM, WA 98226-5583			ENGLE, PATRICIA LYNN	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,385

Applicant(s)

HUSK, VERNON RUSS

Examiner

Patricia L Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/2/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cross section shape of the sealing body being substantially oval (claim 12), substantially round (claim 13) and substantially square (claim 14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 1-14 are objected to because of the following informalities:
- a. In claim 1, line 2, “the perimeter sub-region” should be -a perimeter sub-region-;
 - b. In claim 1, line 8, “the second surface” should be --a second surface--;
 - c. Throughout the claims “perimeter region(s)” should be -perimeter sub-region(s)-;
 - d. In claim 2, the limitation “having a longitudinally extending axis” should be moved so that the limitation is directed to the elongate member and not the cab;
 - e. In claim 2, line 7, “an upper perimeter region” should be deleted;
 - f. In claim 3, line 2, “our” should be -are-;
 - g. In claim 7, either the dependency should be changed to claim 3 or “the lateral” regions should be changed;
 - h. In claim 9, line 3, “the forward” should be --a forward--;
 - i. In claim 10, line 2, “the cab rear” after “forward wall” should be deleted.

Appropriate correction is required.

The Attorney should proof read all of the claims to check for errors that the Examiner may have missed.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-8, 17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 1 and 6 recite the limitation "the sealing member" in lines 5 and lines 1 respectively. There is insufficient antecedent basis for this limitation in the claim.

Is "the sealing member" the same as the "elongate member"?

6. The term "the pressure ... is low" in claim 2 is a relative term which renders the claim indefinite. The term "the pressure... is low" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What is defined as low pressure? How would one of ordinary skill in the art know if the pressure was low?

7. The term "little force" in claim 17 is a relative term which renders the claim indefinite. The term "little force" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What is a little force? How would one of ordinary skill in the art know if the force was little?

8. Regarding claim 19, the phrase "demand to break the seal" renders the claim indefinite. What is meant by that phrase?

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (US Patent 3,840,266).

Regarding claim 1, Carlson discloses an elongate member (8) adapted to be mounted in between a cab (2) and a canopy (4) where the cab (2) has a rear window (7) with ~~the~~ a perimeter sub-region (Fig. 2) and the canopy (4) has a forward window (column 1, lines 64-66) providing a perimeter sub-region where the perimeter sub-regions of the rear window (7) and the forward window are substantially aligned (column 1, lines 64-66), the sealing member (8) comprising: an elongate axis (inherent) and a first set of opposed elongated surfaces (14,15) comprising a first surface (14) and ~~the~~ a second surface (15) whereby the first and second surfaces (14,15) are adapted to engage the perimeter regions of the rear window and the forward window (Fig. 3), the elongate member (8) further having a second set of opposed surfaces (16 and opposite surface in Fig. 3) comprising a third elongated surface (16) and a fourth surface (opposite 16 in Fig. 3) that are substantially opposed to one another and are adapted to engage the perimeter region of the rear window and the perimeter region of the forward window (they are capable of engaging the perimeter regions), whereas the elongate member (8) is adapted to rotate substantially about its central elongate axis to provide engagement with the first and second opposed surfaces to the perimeter regions of the rear window and the forward window or to provide engagement of the third and fourth opposed surfaces to the perimeter regions of the rear window and the forward window (the elongate member 8 is capable of being rotated about its axis since it “is made from a flexible or elastic and compressible material”- column 2, lines 16-17).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Applicant's admission as to the properties of DURAFOAM™ (<http://www.rubberplastics.com/products.htm> copyright 2001).

Regarding claim 2, Carlson discloses an elongate member (8) having a longitudinally extending axis adapted to be mounted between a cab (2) ~~having a longitudinally extending axis~~ and a canopy (4) where the cab (2) has a rearward window (7) with a perimeter sub-region (Fig. 2) and the canopy (4) has a forward window (column 1, lines 64-66) having a perimeter sub-region where the rearward and forward windows have a first lateral perimeter region (11), a second lateral perimeter region (11), an upper perimeter region (9) and a lower perimeter region (10) ~~and upper perimeter region~~, the elongate member (8) having the properties: made from flexible material (column 2, lines 16-17). Regarding claim 3, Carlson discloses an elongate member where the elongate member (8) has a central elongate axis (inherent) and first and second surfaces (14,15) that are substantially opposed to one another (Fig. 3) and have a first sealing member distance (Fig. 3) between the first and second surfaces (14,15) and third and fourth surfaces (16,surface opposite 16 in Fig. 3) that are substantially opposed to one another (Fig. 3)and have a second sealing member distance (Fig. 3) between the third and fourth

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surfaces. Regarding claim 4, Carlson discloses an elongate member where the first and second lateral perimeter regions (11) have a lateral longitudinal distance between the rearward perimeter region and the forward perimeter region and the upper perimeter region (9) has a lateral longitudinal distance between the rearward perimeter region and the forward perimeter region whereby the lateral longitudinal distance is not the same as the upper longitudinal distance (column 8, line 10-16) whereby the elongate member is adapted to rotate about the central elongate axis whereby the first and second surfaces are adapted to engage the first and second lateral perimeter regions and the third and fourth surfaces are adapted to engage the upper perimeter region (the elongate member of Carlson is capable of being rotated along its axis so that different surfaces contact the cab and the canopy perimeter surfaces). Regarding claim 5, Carlson discloses the elongated member whereby the lower perimeter region (10) has a longitudinal distance between the rearward perimeter region and the forward perimeter region and the third and fourth surfaces (16) of the sealing member are adapted to engage the lower perimeter region (the third and fourth surfaces are capable of engaging the lower perimeter).

Carlson does not disclose that the flexible material is adapted to compress at a first rate and expand to an original cross sectional size at a second rate which is slower than said first rate whereby the elongate member is adapted to compress and frictionally engage between the first lateral perimeter region, the upper perimeter region, the second lateral perimeter region in the lower perimeter region and after said engagement the material has compression memory where the expansion rate is further impeded and the pressure upon the first lateral perimeter region, the second lateral perimeter region, the upper perimeter region and the lower perimeter region and upper perimeter region is low.

The Applicant states that DURAFOAM™ meets these limitations on page 11. The web page cited states that DURAFOAM™ is for sale by Monmouth and the web page was copyrighted in 2001.

It would have been obvious to one of ordinary skill in the art to use DURAFOAM™ as the “compressible material such as foam rubber or foam plastic” (Carlson- column 2, lines 16-17). The motivation would have been to use a foam plastic with shock absorption qualities and which is a hot and cold insulator (DURAFOAM™ web page).

Regarding claim 6, Carlson discloses the elongated member where the sealing member (8) has a first end and a second end whereby the first and second ends are adapted to engage one another in a face-to-face engagement in between the rearward perimeter region and the forward perimeter region. Column 2, lines 7-9 of Carlson states “the elastic seal of this invention comprises a sealing body 8 formed to provide an elongated closed loop”. This statement indicates that the sealing body 8 is an elongated member with two ends which engage one another in face to face engagement. However, if that is not what Carlson was implying then it would have been obvious to one of ordinary skill in the art to form the closed loop by taking an elongated member and having the two ends engage in face to face engagement. The motivation would have been to make manufacturing of the seal simple.

Regarding claims 7 and 8, the location of the sealing member would have been an obvious design choice. The motivation for choosing the moveable window portion would have been to reduce the material needed to provide a seal. The motivation for choosing the fixed window portion would have been to reduce the amount of material needed for the seal and to allow the window to be open or closed while the canopy is mounted on the vehicle.

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Regarding claim 9, Carlson as modified discloses the product of the elongated seal as discussed with regard to claim 2. Carlson does not disclose that the seal is placed in the gap in both orientations. However, the seal of Carlson is capable of being placed at any orientation. The motivation for having surface 16 and its opposing surface engage the cab and canopy would be that the gap between the cab and the canopy is so narrow that a wide seal is not needed.

Regarding claim 10, Carlson as modified discloses the elongate member for filling a gap between a cab and a canopy as discussed in claim 2 above. Carlson also discloses that the elongate member is held in the gap by an expansion force and a frictional force. Although Carlson discloses adhesive tape to mount the sealing member, the adhesive force is used to align the seal with the cab and the canopy. After the seal is aligned the canopy is moved forward to compress the seal. Therefore the adhesive tape is only acting as another moisture blocker at that point and there is a vertical friction force holding the seal in place.

Regarding claim 11, the Applicant's admit that DURAFOAM™ meets the limitation of claim 11. It would have been obvious to one of ordinary skill in the art to use DURAFOAM™ as the "compressible material such as foam rubber or foam plastic" (Carlson- column 2, lines 16-17). The motivation would have been to use a foam plastic with shock absorption qualities and which is a hot and cold insulator (DURAFOAM™ web page).

Regarding claims 12-14, the cross sectional shape of the elongated member would be a matter of design choice. Seals are known to be oval, round, square and rectangular. The seal would be compressible to engage both the cab and the canopy with an oval, round or square cross section.

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Regarding claim 15, Carlson as modified discloses the elongated member as disclosed in claim 10 above. Carlson does not disclose that the seal is rotated so that one set of surfaces engage the cab and canopy at one gap width and the other set of surfaces engage the cab and canopy at another gap width. However, the seal of Carlson is capable of being rotated so that the different surfaces engage the cab and canopy at different gap widths. The motivation for rotating the elongated member would be that to have a similar compression force on the seal.

Regarding claim 16, Carlson as modified discloses the method as recited in claim 15 whereby the vehicle back cab has a painted surface (inherent to a pickup truck with a removable canopy).

Regarding claim 17, the Applicant's admit that DURAFOAM™ meets the limitation of claim 17. It would have been obvious to one of ordinary skill in the art to use DURAFOAM™ as the "compressible material such as foam rubber or foam plastic" (Carlson- column 2, lines 16-17). The motivation would have been to use a foam plastic with shock absorption qualities and which is a hot and cold insulator (DURAFOAM™ web page).

Regarding claim 18, Carlson as modified disclose the method as recited in the claim 15 whereby the sealing body (8) is adapted to extend into cavity regions of the perimeter portion of the window frame and frictionally engage therein (column 3, lines 1-3 and lines 9-16).

Regarding claim 19, Carlson as modified disclose the method as recited in the claim 15 above whereby the sealing body (8) is adapted to extend into the cavity regions of a perimeter portion of a window frame and provide a circuitous route for dust and debris demand to break the seal between the cab region and the surrounding environment (column 3, lines 1-16).


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777. The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patricia L Engle
Examiner
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August 25, 2004